

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL STEWART,

Plaintiff,

vs.

CITY OF SAN DIEGO; PAM ROWLETT;  
SCOTTY ODOM; JOSE CONDE; JR  
COPELAND; J KELLY; MICHAEL  
WALLACE; ADAM SCHROM; DANIEL  
STANLEY; DENNY KREMER; KEVIN  
HOLYFIELD; JOHN HUYS; THOMAS  
McGRATH; STEVEN WITT; MICHAEL  
BROWN JR.; DONA HUFFORD; WALTER  
J. RUSSELL; GLENDA PATRICK;  
A. DOHERTY; WENDY DAVISSON;  
DOUG SENSABAUGH; and

Defendants.

CASE NO. 09cv844-IEG(WMc)

Order Granting Defendants' Motion  
for Summary Judgment

Plaintiff Michael Stewart, proceeding pro se, filed a Second Amended Complaint on August 9, 2010, alleging Defendant Officer Pam Rowlett ("Rowlett") violated his constitutional rights when (1) she searched him and his car without probable cause on the morning of Saturday, June 14, 2008 [Second Amended Complaint ("SAC"), filed August 9, 2010, Doc. 54, p. 32)], and (2) she cut in front of his car while driving near the intersection of National Avenue and 16<sup>th</sup> Street on February 23, 2009, causing him to crash and suffer significant injuries [SAC, Doc. 54, p. 30).] Plaintiff further alleges Defendant Police Officers Scotty Odom, Jose Conde, J.R. Copeland, J. Kelly, Michael Wallace, Adam Schrom, Daniel Stanley, Denny Kremer, Kevin Holyfield, John

Guys, Thomas McGrath, Steven Witt, Michael Brown, Dona Hufford, Walter Russell, Glenda Patrick, and A. Doherty (collectively “Other Officers”), as well as City Attorney Wendy Davisson (“Davisson”) and Investigator Doug Sensabaugh (“Sensabaugh”), engaged in a conspiracy to cover-up the February 23, 2009 matter by submitting a false police report and incident report. [*Id.*]

Defendants now move for summary judgment on all of Plaintiff’s claims. For the reasons explained below, the Court GRANTS Defendants’ motion.

### **Factual Background**

#### *1. The Stop and Search on June 14, 2008*

On the morning of Saturday, June 14, 2008, Plaintiff was sitting in his car on the corner of 14<sup>th</sup> and Imperial Avenue, adjacent to Father Joe’s Village in the East Village of downtown San Diego. [SAC, p.3 (Doc. No. 54, p. 32)<sup>1</sup>.] On that date, Defendant Officer Pam Rowlett (“Rowlett”) was assigned to the Central Division as a uniformed police officer, in a marked patrol car, patrolling the area near 14<sup>th</sup> and National Avenue.<sup>2</sup> [Declaration of Officer Pam Rowlett in Support of Motion for Summary Judgment (“Rowlett Decl.”) ¶ 5.] As part of her duties, on prior occasions, she had observed people buying and selling drugs from persons sitting in cars in this area. [*Id.*]

In the early morning hours for several days prior to June 14, 2008, Rowlett observed Plaintiff sitting in a parked late model Infinity Q45, registered to Plaintiff. [*Id.*] Rowlett saw people walk up to Plaintiff’s car, quickly exchange items with him, and then quickly walk away. Alternatively, people would quickly get in and out of the car and then leave the area. [*Id.*] These

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<sup>1</sup>Plaintiff included a signature page with his SAC, stating “All statements are true and correct.” [SAC, Doc. 54, p. 31.] Plaintiff does not assert his belief in the truth of the matters set forth in the SAC under penalty of perjury as required by Cal. Code Civ. Proc. § 446(a). A verified complaint may, under certain circumstances, suffice as an affidavit in opposition to a motion for summary judgment. California Pro-Life Council v. Randolph, 507 F.3d 1172, 1176 (9th Cir. 2007) (“A verified complaint may serve as an affidavit for purposes of summary judgment if [1] it is based on personal knowledge and if [2] it sets forth the requisite facts with specificity.”) (quoting Moran v. Selig, 447 F.3d 748, 760 n.16 (9th Cir. 2006) (citation omitted)). Because Plaintiff’s SAC is neither signed under penalty of perjury, nor sets forth the requisite facts with specificity, the Court cannot consider it an affidavit for purposes of Rule 56(e). Nonetheless, the Court relies on that pleading to give an overview of Plaintiff’s claims.

<sup>2</sup>National Avenue and Imperial Avenue intersect with one another one block from where they each intersect with 14<sup>th</sup> Street, forming a triangular block.

1 actions were consistent with persons who bought and sold drugs in that area. [Id.]

2 At about 10:40 a.m. on June 14, 2008, Rowlett observed Plaintiff parked at a lot, south of  
3 Imperial Avenue on 14<sup>th</sup> Street. [Rowlett Decl. ¶ 6.] Rowlett was aware Plaintiff had a criminal  
4 record for the use and sale of controlled substances, and also had information from other officers  
5 that Plaintiff was involved in selling drugs in this area. [Id. ¶ 7.] Rowlett observed a black male  
6 walk up to Plaintiff's open car window, and saw Plaintiff swiftly transfer a small package in  
7 exchange for another small item she believed to be cash. [Id. ¶ 8.] Based upon her training and  
8 experience, Rowlett believed Plaintiff had committed a hand-to-hand drug sale transaction. [Id.  
9 ¶ 9.]

10 Rowlett approached Plaintiff while he was still in his car and told him she observed what  
11 she believed to be a drug sale. [Rowlett Decl. ¶ 10.] Plaintiff denied involvement with drugs.  
12 [Id.] Rowlett arrested Plaintiff under Cal. Health & Safety Code § 11532(a), loitering for drug  
13 activities, and placed him in handcuffs. [Id. ¶ 11.] Rowlett searched Plaintiff for drugs but did not  
14 find any. She did find cash in Plaintiff's pockets. [Id. ¶ 12.] Rowlett issued Plaintiff a citation,  
15 and then released him. [Id. ¶ 13; San Diego Police Department Notice to Appear dated June 14,  
16 2008, Exhibit G to Defendants' motion.]

17 Plaintiff asserts Rowlett also searched his car during this interaction. [SAC, Doc. 54, p. 32;  
18 Declaration of DeWayne Wilson in Support of Plaintiff's Opposition ("Wilson Decl."), Doc. 68, p.  
19 155; Declaration of Ricardo Donaldson, Doc. 68, p. 156; Declaration of Janene Castillo in Support  
20 of Plaintiff's Opposition ("Castillo Decl."), Doc. 68, p. 157; Declaration of Kirk Reddick in  
21 Support of Plaintiff's Opposition, Doc. 68, p. 158.] Rowlett denies she or any other officer  
22 searched Plaintiff's car. [Rowlett Decl. ¶ 12.] As explained below, this dispute of fact is not  
23 material for purposes of summary judgment.

24 Immediately after Rowlett released Plaintiff, Plaintiff contacted Rowlett's supervisor,  
25 Sergeant Thomas McGrath, about the contact, and demanded the citation be dismissed. [Rowlett  
26 Decl. ¶ 16.] Sergeant McGrath refused to dismiss the citation. [Id.] Plaintiff alleges that at the  
27 time of his interaction with Rowlett, he was homeless and waiting for resources to become  
28 available at St. Vincent DePaul at 11:00 a.m. [SAC, Doc. 54, p. 32.] Plaintiff also asserts

1 Rowlett harassed and illegally searched him on two prior unidentified occasions at the same  
2 location. [*Id.*; Castillo Decl.; Wilson Decl.]

3 2. *The Car Accident on February 23, 2009*

4 At approximately 10:50 p.m. on February 23, 2009, Plaintiff was driving in the right-hand  
5 lane traveling eastbound on National Avenue. [SAC, Doc. 54, p. 30.] He noticed a police car  
6 being driven by Officer Rowlett pulling up beside him in the left lane. Rowlett maintained the  
7 same speed as Plaintiff until they reached to the intersection of National Avenue and 16<sup>th</sup> Street.  
8 At that intersection, without any warning, Rowlett cut in front of Plaintiff from a left turn only  
9 lane. [Declaration of Douglas Miller in Support of Plaintiff's Opposition, Doc. 68, p. 162.]  
10 Plaintiff lost control of his car and crashed into a street lamp, receiving serious injuries. Plaintiff  
11 initially had no memory of the accident, but alleges his memory returned in March. After his  
12 memory returned, Plaintiff was shocked to learn the officers covered up what happened at the  
13 scene. [SAC, Doc. 54, p. 30.]

14 While Plaintiff was still at the UCSD Medical Center in Hillcrest, receiving treatment for  
15 his injuries, Plaintiff made the following statement to the investigating officer, Officer Witt:

16 I got into my car to move it, but I'm not sure where. I was going  
17 down Imperial Avenue, that's the last thing I remember. I was  
18 driving and eating pizza. I could have been going to the corner store  
to get cigarettes, but I don't know. No one was in the car, but me. I  
really don't know what happened.

19 [Traffic Collision Report prepared by Officer Witt, Exhibit B to Defendants' Motion, p. 13.]

20 When Witt interviewed Plaintiff he noticed Plaintiff's eyes were bloodshot and "Stewart was  
21 slurring his words and having trouble forming his words." [*Id.*] Plaintiff's blood was drawn at the  
22 hospital and it tested positive for opiates, and 4 ng/mL of Morphine. [Bio-Tox Laboratories report  
23 dated March 2, 2009, Exhibit C to Defendants' Motion.]

24 Plaintiff's friend, Douglas Miller, who has submitted a declaration in opposition to  
25 Defendants' motion, gave the following statement to Officer Copeland after the accident:

26 I was standing outside urinating when I heard a crash. I turned and  
27 saw my friend, Mike, in a car that had hit a pole. I walked over and  
28 asked if he was okay? He said that he needed to get some sleep. I  
told him to get in the back seat and I moved his car for him.

[Traffic Collision Report prepared by Officer Copeland, Exhibit D to Defendants' Motion, p. 5.]

1 At the time of the accident on February 23, 2009, Rowlett was assigned to the Central  
2 Division, working in full uniform and patrolling in a two officer unit with Officer Rex Cole.  
3 [Rowlett Decl. ¶ 17.] Rowlett states she was not involved in an accident with Plaintiff and did not  
4 see the collision. [Id. ¶ 18.] On the evening of the accident, Rowlett and her partner, Rex Cole,  
5 transported a female prisoner to Las Colinas Jail in Santee for booking at 8:50 p.m. [Declaration  
6 of Rex Cole (“Cole Decl.,” ¶ 7.] After booking the female prisoner into Las Colinas, Rowlett and  
7 Cole returned to San Diego. At 10:02 p.m., the two were parked at 8<sup>th</sup> Avenue and J Street writing  
8 reports. [Cole Decl., ¶ 8.] The San Diego Police Department (“SDPD”) Global Mapping System  
9 (“GPS”) confirms that Rowlett’s SDPD vehicle was parked at 8<sup>th</sup> Avenue and J Street with six  
10 other SDPD police units at about the time the incident occurred. [Declaration of Joseph Maggio in  
11 Support of Motion (“Maggio Decl.”), Exhibit F to Defendants’ Motion, ¶ 10.] At 10:56 p.m.,  
12 Rowlett and Cole received a radio message regarding an accident involving Plaintiff. [Cole Decl.,  
13 ¶ 9.] The GPS records further indicate no SDPD marked police vehicle was in the area of National  
14 Avenue and 16<sup>th</sup> Street at the time of Plaintiff’s accident. [Maggio Decl., ¶ 8.]

### 15 *Procedural History*

16 Plaintiff originally filed his Complaint in San Diego County Superior Court on April 15,  
17 2009, naming Officer Rowlett and the City of San Diego as Defendants. The City of San Diego  
18 removed the action on April 22, 2009. [Doc. 1.] Defendants moved to dismiss the Complaint  
19 [Doc. 5], and Plaintiff responded by seeking leave to amend. [Doc. 9.] The Court granted  
20 Plaintiff leave to amend and denied as moot the City’s motion to dismiss. [Doc.17.] Plaintiff filed  
21 his first amended complaint on June 30, 2009, naming numerous additional individual officers as  
22 Defendants. [Doc. 18.] Defendants City of San Diego and Rowlett filed an answer on July 7,  
23 2009. [Doc. 19.] Plaintiff served the remaining individual officer Defendants in July and August  
24 of 2010, after the Court set the matter for a hearing under Fed. R. Civ. P. 4(m).

25 On August 9, 2010, Plaintiff filed a Second Amended Complaint (“SAC”). [Doc. 54.] All  
26 Defendants filed an answer to the SAC on August 24, 2010. [Doc. 57.] Plaintiff attempted to file a  
27 Third Amended Complaint on September 10, 2010, but the Court rejected the document because  
28 Plaintiff did not seek prior leave of Court. [Docs. 58 and 59.]

Defendants filed the current motion for summary judgment on September 10, 2009. In response, Plaintiff has filed a number of documents. [Docs. 68, 77, 80.] In addition, Plaintiff has filed a motion for leave to add a cause of action for retaliation. [Doc. 71.] Just prior to the hearing on Plaintiff's motion, Magistrate Judge McCurine held a hearing on two pending discovery motions filed by Plaintiff [Docs. 73 and 75]. Judge McCurine ordered Officer Rowlett and her partner to both provide Plaintiff with declarations regarding their whereabouts one hour before and one hour after the incident and identify the location of Rowlett's squad car for that same time period. Judge McCurine also ordered Officer Rowlett to provide a declaration that she did not seek medical attention and was not injured on the date of the incident. Finally, Judge McCurine ordered Defendant to produce, for *in camera* review, Officer Rowlett's personnel records. [Doc. No. 84.] Defendants filed the declarations required by Judge McCurine's order on November 8, 2010 [Doc. 86]. Following *in camera* review, Judge McCurine ordered Defendant to produce certain documents from Officer Rowlett's personnel file. [Doc. No. 88.]<sup>3</sup>

#### **Legal Standard**

Summary judgment is proper where the pleadings and materials demonstrate "there is no genuine issue as to any material fact and . . . the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c)(2); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A material issue of fact is a question a trier of fact must answer to determine the rights of the parties under the applicable substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

The moving party bears "the initial responsibility of informing the district court of the basis for its motion." Celotex, 477 U.S. at 323. To satisfy this burden, the movant must demonstrate that no genuine issue of material fact exists for trial. Id. at 322. Where the moving party does not

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<sup>3</sup>Plaintiff did not request a continuance of the summary judgment motion to allow this discovery to be completed. Nonetheless, the Court withheld its decision pending Magistrate Judge McCurine's ruling on the pending discovery. In addition, after Magistrate Judge McCurine issued his order, the Court reviewed the documents lodged for *in camera* review, to determine if any of those materials were relevant or had any impact upon the Defendants' summary judgment motion. Upon review, the Court concludes nothing in the privileged documents lodged by Defendant for *in camera* review creates a genuine issue of material fact precluding summary judgment.

1 have the ultimate burden of persuasion at trial, it may carry its initial burden of production in one  
 2 of two ways: “The moving party may produce evidence negating an essential element of the  
 3 nonmoving party’s case, or, after suitable discovery, the moving party may show that the  
 4 nonmoving party does not have enough evidence of an essential element of its claim or defense to  
 5 carry its ultimate burden of persuasion at trial.” Nissan Fire & Marine Ins. Co., v. Fritz Cos., 210  
 6 F.3d 1099, 1106 (9th Cir. 2000). To withstand a motion for summary judgment, the non-movant  
 7 must then show that there are genuine factual issues which can only be resolved by the trier of  
 8 fact. Reese v. Jefferson Sch. Dist. No. 14J, 208 F.3d 736, 738 (9th Cir. 2000). The non-moving  
 9 party may not rely on the pleadings alone, but must present specific facts creating a genuine issue  
 10 of material fact through affidavits, depositions, or answers to interrogatories. Fed. R. Civ. P.  
 11 56(e); Celotex, 477 U.S. at 324.

12 The court must review the record as a whole and draw all reasonable inferences in favor of  
 13 the non-moving party. Hernandez v. Spacelabs Med. Inc., 343 F.3d 1107, 1112 (9th Cir. 2003).  
 14 However, unsupported conjecture or conclusory statements are insufficient to defeat summary  
 15 judgment. Id.; Surrell v. Cal. Water Serv. Co., 518 F.3d 1097, 1103 (9th Cir. 2008). Moreover,  
 16 the court is not required “to scour the record in search of a genuine issue of triable fact,” Keenan  
 17 v. Allan, 91 F.3d 1275, 1279 (9th Cir.1996) (citations omitted), but rather “may limit its review to  
 18 the documents submitted for purposes of summary judgment and those parts of the record  
 19 specifically referenced therein.” Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1030  
 20 (9th Cir. 2001).

### 21 Discussion

22 Section 1983 imposes two essential proof requirements upon a plaintiff: (1) that a person  
 23 acting under color of state law committed the conduct at issue; and (2) that the conduct deprived  
 24 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the  
 25 United States. 42 U.S.C. § 1983; Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other  
 26 grounds by Daniels v. Williams, 474 U.S. 327, 328 (1986); see Haygood v. Younger, 769  
 27 F.2d 1350, 1354 (9th Cir. 1985) (en banc). Even where a plaintiff establishes violation of his  
 28 constitutional rights, an officer is entitled to qualified immunity unless plaintiff demonstrates the



1 officer's conduct violated clearly established federal right. Saucier v. Katz, 533 U.S. 194, 201  
2 (2001).

3 1. The Stop and Search on June 14, 2008

4 Plaintiff does not specify what right Defendant Pamela Rowlett violated with regard to the  
5 June 14, 2008 stop and search. The Fourth Amendment protects citizens from unreasonable  
6 searches and seizures, and generally prohibits searches without a warrant. United States v. Smith,  
7 389 F.3d 944, 950 (9<sup>th</sup> Cir. 2004). In determining whether an arresting officer has probable cause  
8 to make a warrantless arrest, courts must consider "all the facts known to the officers and consider  
9 all the reasonable inferences that could be drawn by them before the arrest." United States v.  
10 Martin, 509 F.2d 1211, 1213 (9<sup>th</sup> Cir. 1975). "'Probable cause exists when the facts and  
11 circumstances within the officer's knowledge are sufficient to cause a reasonably prudent person  
12 to believe that a crime has been committed'." Brooks v. City of Seattle, 599 F.3d 1018, 1023 (9<sup>th</sup>  
13 Cir. 2010) (quoting Lassiter v. City of Bremerton, 556 F.3d 1049, 1053 (9<sup>th</sup> Cir. 2009)).

14 Here, Rowlett's declaration establishes she had probable cause to arrest Plaintiff on  
15 June 14, 2008. Rowlett observed Plaintiff parked at this location for several days prior to this  
16 arrest, and observed Plaintiff and other persons engaging in activity consistent with the sale and  
17 purchase of drugs. Rowlett also had information from other officers that Plaintiff was involved in  
18 drug sales in the area, and Rowlett was aware Plaintiff had a criminal record for the use and sales  
19 of controlled drugs. Rowlett observed a man walk up to Plaintiff's open car window, and swiftly  
20 transfer a small package to Plaintiff in exchange for what appeared to be cash. [Rowlett Decl.  
21 ¶ 8.] Based upon these facts, a reasonably prudent person would have cause to believe a crime had  
22 been committed. Neither Plaintiff's unverified allegations in the SAC, nor the declarations he has  
23 submitted from other individuals in opposition to the summary judgment motion, address the facts  
24 set forth in Rowlett's declaration. Plaintiff alleges in his SAC that he did not have drugs and he  
25 was only waiting to use resources at St. Vincent DePaul. He does not, however, dispute the facts  
26 set forth in Rowlett's declaration.

27 Searches incident to arrest, limited to the area within the arrestee's immediate control, are  
28 exempted from the warrant and probable cause requirements of the Fourth Amendment. United



1 States v. Caseres, 533 F.3d 0164, 1070 (9<sup>th</sup> Cir. 2008). In addition, automobiles, because of their  
 2 inherent mobility, may be searched without a warrant so long as the search is supported by  
 3 probable cause or by some other Fourth Amendment exception applies. Id. Officers may search  
 4 the inside of the vehicle incident to an arrest so long as the defendant was a “recent occupant” of  
 5 the vehicle. Id. at 1071. Here, Rowlett states she did not search Plaintiff’s car. Even if the Court  
 6 accepts Plaintiff’s version of the facts, however, Rowlett’s search took place immediately after  
 7 Plaintiff’s arrest. Plaintiff was a “recent occupant” of the vehicle. Therefore, even if Rowlett  
 8 searched Plaintiff’s vehicle, that search was authorized by law and did not violate the Fourth  
 9 Amendment.

10 Because Plaintiff has not demonstrated Rowlett violated his constitutional rights, Rowlett  
 11 is entitled to qualified immunity on Plaintiff’s claims arising from the alleged June 14, 2008 stop  
 12 and search.

13 2. The Car Accident on February 23, 2009

14 The court must, in considering a summary judgment motion, view the facts in the light  
 15 most favorable to the nonmoving party. Fed. R. Civ. P. 56(c). However, “[w]hen the moving  
 16 party has carried its burden under Rule 56(c), its opponent must do more than simply show that  
 17 there is some metaphysical doubt as to the material facts .... Where the record taken as a whole  
 18 could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for  
 19 trial’.” Matsushita Elec., 475 U.S. at 586-87. “When opposing parties tell two different stories,  
 20 one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a  
 21 court should not adopt that version of the facts for purposes of ruling on a motion for summary  
 22 judgment.” Scott v. Harris, 550 U.S. 372, 380 (2007).

23 Here, Defendants have submitted a declaration establishing that, according to SDPD GPS  
 24 tracking records, neither Rowlett nor any other SDPD marked police car was at the place where  
 25 Plaintiff wrecked his car on February 23, 2009. [Maggio Decl. ¶ 9 and 10.] Rowlett has stated  
 26 under penalty of perjury, that she was not involved in the collision. [Rowlett Decl. ¶ 18.]  
 27 Defendants have also provided a declaration by Rowlett’s partner, that the two of them were  
 28 parked near 8<sup>th</sup> Avenue and J Streets writing reports from 10:02 p.m. until they received the call

1 regarding the accident at 10:56 p.m. [Declaration of S.D.P.D. Officer Rex Cole, ¶ 8.] Even  
 2 Plaintiff's statement immediately after the accident contradicts his allegations in the SAC  
 3 regarding Rowlett's conduct.

4 In opposition to Defendants' motion, Plaintiff submits a declaration from Douglas Miller  
 5 stating he saw a police car cut Plaintiff off. This declaration, however, is also contrary to the  
 6 statement Miller made to officers immediately after the accident. In addition, Miller does not  
 7 identify the driver of the car or affirmatively state that Rowlett was driving the police car. Plaintiff  
 8 has submitted extensive police dispatch records and the CDs of the dispatch conversations, and  
 9 argues there is a dispute of fact as to whether there was a second car involved in the February 23,  
 10 2009 accident. Having reviewed the reports and listened to the dispatch CDs, the Court finds no  
 11 information therein which creates a genuine issue of material fact regarding Rowlett's involvement  
 12 in Plaintiff's car accident. Even if there was a second car involved, Plaintiff has submitted no  
 13 evidence demonstrating Rowlett was the driver of that car.

14 Finally, Plaintiff fails to identify any constitutional right Rowlett allegedly violated based  
 15 upon the February 23, 2009 accident. At most, Plaintiff's allegations establish Rowlett may have  
 16 cut in front of him in traffic. Poor driving does not violate the constitution. In his proposed third  
 17 amended complaint filed on September 27, 2010 [Doc. 71-1], Plaintiff alleges Officer Rowlett  
 18 caused him to wreck his car on February 23, 2009 in retaliation for his pending lawsuit against her.  
 19 However, Plaintiff's complaint in this case was filed *after* the February 23, 2009 accident. There  
 20 are no other facts from which the Court could conclude Plaintiff has a constitutional claim against  
 21 Rowlett. Rowlett is, therefore, entitled to summary judgment on Plaintiff's claim based upon the  
 22 alleged February 23, 2009 incident.

### 23 3. Individual Officer Defendants

24 In his SAC, Plaintiff alleges the Other Officers, Davisson, and Sensabough acted in concert  
 25 to cover up Rowlett's alleged involvement in the accident. Plaintiff provides no facts in support of  
 26 his claim, and sets forth no legal theory upon which these Defendants could be held liable under  
 27 42 U.S.C. § 1983. Plaintiff cites Cal. Penal Code § 182(a)(5), which prohibits criminal  
 28 conspiracies to pervert or obstruct justice. However, California law provides no private cause of

1 action under that statute. Ellis v. City of San Diego, 176 F.3d 1183, 1189 (9<sup>th</sup> Cir. 1993) (the penal  
 2 code section does not create enforceable individual rights). These Defendants are entitled to  
 3 summary judgment.

4 4. City of San Diego

5 Finally, the City of San Diego seeks summary judgment on grounds that Plaintiff has failed  
 6 to identify, and no evidence in the record exists, to show any municipal policy or procedure related  
 7 to either the June 14, 2008 stop and search or the February 23, 2009 incident.

8 “[A] municipality cannot be held liable solely because it employs a tortfeasor – or, in other  
 9 words, a municipality cannot be held liable under § 1983 on a respondeat superior theory.”  
 10 Monell v. Department of Social Services, 436 U.S. 658, 691 (1978); Gibson v. County of Washoe,  
 11 290 F.3d 1175, 1185 (9<sup>th</sup> Cir. 2002). A municipality may be liable under § 1983 for monetary,  
 12 declaratory, or injunctive relief where the constitutional deprivation was caused by the  
 13 implementation or execution of “a policy statement, ordinance, regulation, or decision officially  
 14 adopted and promulgated by that body’s officers.” Monell, 436 U.S. at 690; Board of the County  
 15 Commissioners v. Brown, 520 U.S. 397, 402-04 (1997); Navarro v. Block, 72 F.3d 712, 714 (9<sup>th</sup>  
 16 Cir. 1995).

17 To establish municipal liability, plaintiff must show: (1) he was deprived of a  
 18 constitutional right; (2) the city had a policy; (3) the policy amounted to deliberate indifference to  
 19 plaintiff’s constitutional right; and (4) the policy was the “moving force behind the constitutional  
 20 violation.” Van Ort v. Estate of Stanewich, 92 F.3d 831, 835 (9<sup>th</sup> Cir. 1996); Brown, 520 U.S. at  
 21 402-04; Trevino v. Gates, 99 F.3d 911, 918 (9<sup>th</sup> Cir. 1996). Thus, municipal liability depends in  
 22 part, on the showing of a “causal link between the municipal action and the deprivation of federal  
 23 rights.” Brown, 520 U.S. at 402-04; Monell, 436 U.S. at 691; Gibson, 290 F.3d at 1185-87.

24 Plaintiff has failed to demonstrate the individual Defendants violated his constitutional  
 25 rights, and has set forth no facts to establish liability on behalf of the City. Therefore, the Court  
 26 GRANTS the City’s motion for summary judgment.


27 Conclusion

28 For the reasons set forth herein the Court GRANTS Defendants’ motion for summary

1 judgment in its entirety. The Court DENIES Plaintiff leave to further amend his complaint. The  
2 Clerk shall enter judgment according to this order and close the case.

3 **IT IS SO ORDERED.**

4 **DATED: December 6, 2010**

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6 **IRMA E. GONZALEZ, Chief Judge**  
7 **United States District Court**  
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